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DISTRICT COURT OF GUAM
TERRITORY OF GUAM

RONALD P. MARANGI; et al.,)	Case No. CIV 03-00039 DDP
)	
Plaintiffs,)	ORDER GRANTING IN PART AND
)	DENYING IN PART PLAINTIFFS'
v.)	MOTION FOR SUMMARY JUDGMENT
)	
GOVERNMENT OF GUAM,)	[Motion filed on 04/22/04]
)	
Defendant.)	
)	

This matter comes before the Court on the plaintiffs' motion for summary judgment. After reviewing the materials submitted by the parties and hearing oral argument, the Court grants in part and denies in part the motion, and adopts the following order.

I. Background

A. Factual History

In tax year 1996, the plaintiffs Ronald P. Marangi and Erma K. Marangi (the "plaintiffs"), a married couple, resided in Guam. The plaintiffs timely filed their 1996 income tax return with the defendant Government of Guam (the "defendant") on August 5, 1997.¹ On July 11, 2000, Guam's Department of Taxation and Revenue (the

¹ The plaintiffs applied for and received from the defendant a four-month extension in which to file their return.

1 "Department") selected the plaintiffs' 1996 tax return for an audit
2 examination and mailed a Notice of Examination to the last known
3 address that the Department had for the plaintiffs.² (See Meno
4 Decl. ¶ 4, Ex. B thereto.) However, the plaintiffs had since moved
5 to California and did not receive the Notice of Examination until
6 the plaintiff Mr. Marangi returned to Guam on July 24, 2000. On
7 that same date, Mr. Marangi telephoned Colleen Meno ("Ms. Meno"), a
8 revenue agent at the examination branch of the Department, and
9 informed her that he and his wife had moved to California, and that
10 the records requested by the Department were in storage in
11 California. Mr. Marangi informed Ms. Meno that he would retrieve
12 the requested documents, bring them when he returned to Guam in
13 October 2000, and contact the Department for an appointment at that
14 time. Following his telephone conversation with Ms. Meno, On July
15 24, 2000, Mr. Marangi faxed a letter to Ms. Meno reiterating what
16 he had told her over the telephone. (Id. ¶¶ 6-7, Ex. C thereto.)

17 Because the statute of limitations for assessing additional
18 taxes was due to expire on August 4, 2000, the Department requested
19 that Mr. Marangi sign a Form 872, entitled "Consent to Extend the
20 Time to Assess Tax." Mr. Marangi gave Ms. Meno a Guam fax number
21 and, on July 28, 2000, she faxed Mr. Marangi Form 872. (Id. ¶ 9,
22 Ex. D thereto.) Because Mr. Marangi did not return the form, the
23 Department issued a Notice of Deficiency on August 4, 2000, which
24 was mailed to the plaintiffs at their 790 N. Marine Drive address
25 in Guam. (Id. ¶ 10, Ex. E thereto.) The Notice of Deficiency did
26 not contain any information regarding the taxpayer advocate, the

27
28 ² That address is: 790 North Marine Drive #866, Tumon, Guam
96911.

1 significance of which is set forth in the analysis section of this
2 proposed order.

3 On August 8, 2000, the plaintiffs contacted Mr. Robert Steffy
4 ("Mr. Steffy") and executed a Power of Attorney in favor of Mr.
5 Steffy. (Id., Ex. G-1 thereto.) The Power of Attorney provides
6 for Mr. Steffy to represent the plaintiffs in this matter. (Id.)
7 The Power of Attorney also provides that original documents,
8 including notices, are to be sent to the plaintiffs, and that
9 copies of original documents are to be sent to Mr. Steffy. (Id.)
10 On August 10, 2000, Mr. Steffy met with Ms. Meno and showed her the
11 Power of Attorney that the plaintiffs executed. On that same date,
12 Mr. Steffy signed the Form 872, extending the time within which to
13 make an assessment to December 31, 2001.

14 On December 19, 2001, the Department issued another Notice of
15 Deficiency to the plaintiffs. This Notice was addressed to the
16 plaintiffs in care of Mr. Steffy, but was sent only to Mr. Steffy's
17 address.³ (Id., Ex. I-1 thereto.) As with the first Notice of
18 Deficiency, the December 19, 2001 Notice of Deficiency contained no
19 reference to the taxpayer advocate. On April 24, 2002, Kenneth
20 Benavente ("Mr. Benavente"), a revenue officer at the collection
21 branch of the Department, issued a Notice of Intent to Levy,
22 seeking to levy against property owned by the plaintiffs to pay the
23 alleged tax deficiency. (Benavente Decl. ¶¶ 1-2, Ex. G thereto.)

24

25 ³ Mr. Steffy has declared that he does not recall seeing the
26 December 19, 2001 Notice of Deficiency at the time it was mailed,
27 that he does not have a copy of it in his file, and that he never
28 communicated the existence of this notice to the plaintiffs.
(Steffy Decl. ¶¶ 4-6.) However, the record shows that this notice
was received by an employee of Mr. Steffy on December 21, 2001.
(Meno Decl. ¶ 17, Ex. I thereto.)

1 The Notice of Intent to Levy was sent to the plaintiffs' old
2 mailing address on Guam and was returned to the sender. Neither
3 the original nor a copy of this notice was sent to Mr. Steffy,⁴ and
4 the Department did nothing further to ensure that the plaintiffs
5 were provided with this notice. According to Mr. Benavente, he was
6 unaware of the change of the plaintiffs' address because the
7 Department's collection branch was not provided with the complete
8 file.⁵

9 Thereafter, on September 12, 2002, without the plaintiffs'
10 knowledge, the Department issued a Notice of Levy and served it on
11 the office of Merrill, Lynch, Pierce, Fenner & Smith, Inc.
12 ("Merrill Lynch") in New Jersey in the amount of \$76,705.15. The
13 Levy stated that the assessment date was March 26, 2002. The Levy
14 was subsequently reduced to \$43,850.00. Merrill Lynch put the
15 plaintiffs' funds on hold and has not released them to the
16 Department.

17 B. Procedural History

18 On November 20, 2003, the plaintiffs commenced this action by
19 filing a complaint for injunctive relief, fees and costs of suit,
20 and damages. On November 26, 2003, the plaintiffs filed a motion
21 for preliminary injunction, seeking to compel the defendant to
22 release from Levy the plaintiffs' account with Merrill Lynch.
23 Following a hearing on the plaintiffs' motion for a preliminary
24

25 ⁴ Although Mr. Steffy did not have an address for the
26 plaintiffs, he did have a telephone number and fax number at which
the plaintiffs could be contacted.

27 ⁵ Mr. Kenneth Benavente has testified that pursuant to
28 Department policy, the complete file of a taxpayer is not provided
to the collection branch.

1 injunction, on March 24, 2004, Judge Unpingco issued an order
2 denying the motion. Judge Unpingco found that, while the
3 plaintiffs demonstrated "the likelihood that the [N]otice of [L]evy
4 was improperly issued" (see 03/24/04 Order at 4:22-23), the
5 plaintiffs failed to show that they lacked an adequate legal remedy
6 to warrant the equitable relief requested (see id. at 5:5-18).

7 In response to the March 24, 2004 Order, the plaintiffs filed
8 a First Amended Complaint ("FAC") on April 19, 2004. In the FAC,
9 the plaintiffs seek permanent injunctive relief (first cause of
10 action), or, in the alternative, a judgment against the defendant
11 for a refund of the amount subject to the Levy together with
12 interest thereon (second cause of action). Three days after
13 amending their complaint, on April 22, 2004, the plaintiffs filed
14 the instant motion for summary judgment. By this motion, the
15 plaintiffs seek: (1) a declaratory judgment that the March 26, 2002
16 assessment is void; (2) a permanent injunction requiring the
17 defendant to immediately release the Levy filed with Merrill Lynch;
18 and (3) reimbursement for attorney's fees and costs incurred in
19 this action. The plaintiffs do not seek a refund of the amount
20 subject to the Levy, presumably because the plaintiffs have not
21 paid the assessment in the first instance.

22 **II. Discussion**

23 A. Legal Standard

24 Summary judgment is appropriate where "there is no genuine
25 issue as to any material fact and . . . the moving party is
26 entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).
27 A genuine issue exists if "the evidence is such that a reasonable
28 jury could return a verdict for the nonmoving party," and material

1 facts are those "that might affect the outcome of the suit under
2 the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
3 247-48 (1986). Thus, the "mere existence of a scintilla of
4 evidence" in support of the nonmoving party's claim is insufficient
5 to defeat summary judgment. Id. at 252. In determining a motion
6 for summary judgment, all reasonable inferences from the evidence
7 must be drawn in favor of the non-moving party. Id. at 242.

8 B. Analysis

9 1. The March 26, 2002 Assessment is Void

10 Section 6212(a) of the Internal Revenue Code authorizes the
11 issuance of a Notice of Deficiency. Specifically, that section
12 provides:

13 If the Secretary determines that there is a deficiency in
14 respect of any tax imposed by subtitles A or B or chapter
15 41, 42, 43, or 44, he is authorized to send notice of
16 such deficiency to the taxpayer by certified mail or
17 registered mail. Such notice shall include a notice to
the taxpayer of the taxpayer's right to contact a local
office of the taxpayer advocate and the location and
phone number of the appropriate office.

18 26 U.S.C. § 6212(a) (emphasis added). The last sentence of §
19 6212(a) makes clear that a Notice of Deficiency shall include
20 contact information for the local office of the taxpayer advocate.
21 Moreover, under the Organic Act of Guam, the income tax laws in
22 force in the United States are "held to be likewise in force in
23 Guam." 48 U.S.C. § 1421i(a). Indeed, the Organic Act of Guam
24 expressly provides that, "where not manifestly inapplicable or
25 incompatible," the income tax laws in force in Guam include "all
26 provisions of subtitle F" of the Internal Revenue Code. Id. §
27 1421i(d)(1). Included within subtitle F of the Internal Revenue
28 Code is § 6212(a), the provision set forth above that requires that

1 a Notice of Deficiency include contact information for the taxpayer
2 advocate. In the instant action, neither the August 4, 2000 nor
3 the December 19, 2001 Notice of Deficiency sent to the plaintiffs
4 included any reference to the taxpayer advocate. It is undisputed
5 that the Notice of Deficiency form used by the Department does not
6 contain such information, and that the Government of Guam does not
7 have a taxpayer advocate. (See Opp. at 12:12-13.) Thus, based on
8 the mandatory language of 26 U.S.C. § 6212(a), and the Organic Act
9 of Guam's express adoption of that section as the law of Guam, the
10 Notices of Deficiency sent to the plaintiffs lacked required
11 information, and therefore, are void.

12 The defendant argues that the taxpayer advocate requirement of
13 § 6212(a) of the Internal Revenue Code should not be applied to
14 Guam because that requirement is "manifestly incompatible" with the
15 intent of the Organic Act of Guam. (Opp. at 12:5-11.) According
16 to the defendant, the Internal Revenue Service Restructuring and
17 Reform Act of 1998, PL 105-206 (HR 2676), July 22, 1998, 112 Stat.
18 685 (the "1998 Act"), which created the taxpayer advocate
19 requirement in its present incarnation, substantially restructured
20 and established several new positions within the Internal Revenue
21 Service. (Id. at 12:14-25.) The defendant contends that while the
22 1998 Act reorganized the structure and management of the Internal
23 Revenue Service, it does not necessarily follow that Congress
24 intended to reorganize the structure and management of the
25 Department. (Id. at 13:3-6.)

26 The Court finds the defendant's argument unpersuasive for
27 three reasons. First, § 6212(a) of the Internal Revenue Code
28 contains two requirements: (1) the Notice of Deficiency must be

1 sent to the taxpayer by certified mail or registered mail; and (2)
2 the Notice of Deficiency must include contact information for the
3 local office of the taxpayer advocate. See 26 U.S.C. § 6212(a).
4 If the defendant's argument were adopted, only the first
5 requirement of § 6212(a) would apply to Guam. However, there is
6 nothing in the statutory language that supports the defendant's
7 interpretation.

8 Second, the provisions of the 1998 Act that reorganized the
9 Internal Revenue Service, and to which the defendant refers, are
10 not made applicable to Guam by the Organic Act of Guam. Under §
11 1421i(d) of the Organic Act of Guam, only certain portions of the
12 Internal Revenue Code, including § 6212(a), are expressly made
13 applicable to Guam.

14 Third, the Ninth Circuit has held that the term "manifestly
15 incompatible," as used in the Organic Act of Guam, must be read
16 narrowly. Holmes v. Director of Revenue & Taxation, 827 F.2d 1243,
17 1246 (9th Cir. 1987). The Ninth Circuit construed the term "as
18 giving the court the flexibility to avoid results that are absurd
19 on their face or that lead to internal contradictions in the
20 application of the Code" Id. Here, the defendant has not
21 demonstrated that it would be absurd or contradictory to require
22 the Government of Guam to establish an office of the taxpayer
23 advocate and to provide the office's contact information on Notices
24 of Deficiency sent to taxpayers. The Court is unaware of any
25 reason why taxpayers on Guam should be precluded from enjoying the
26 same protections and rights afforded taxpayers in the fifty states
27 by the taxpayer advocate office.

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1 Section 7803(c) of the Internal Revenue Code, which created
2 the "Office of the Taxpayer Advocate" within the Internal Revenue
3 Service,⁶ provides, "It shall be the function of the Office of the
4 Taxpayer Advocate to -- (i) assist taxpayers in resolving problems
5 with the Internal Revenue Service; (ii) identify areas in which
6 taxpayers have problems in dealings with the Internal Revenue
7 Service; (iii) to the extent possible, propose changes in the
8 administrative practices of the Internal Revenue Service to
9 mitigate problems identified under clause (ii); and (iv) identify
10 potential legislative changes which may be appropriate to mitigate
11 such problems." 26 U.S.C. § 7803(c)(2)(A). Subsections (iii) and
12 (iv) of § 7803(c)(1)(B) set forth the qualifications and employment
13 restrictions of the National Taxpayer Advocate, who is appointed by
14 the Secretary of the Treasury and supervises the Office of the
15 Taxpayer Advocate. Id. § 7803(c)(1)(B)(iii)&(iv). The individual
16 appointed to be the National Taxpayer Advocate cannot have been an
17 officer or employee of the Internal Revenue Service during the two-
18 year period ending with such individual's appointment, and must
19 agree not to accept employment with the Internal Revenue Service
20 for at least five years after ceasing to be the National Taxpayer
21 Advocate. Id. In addition, the local offices of the taxpayer
22 advocate "shall, at the initial meeting with any taxpayer seeking
23 . . . assistance . . . , notify such taxpayer that the taxpayer
24 advocate offices operate independently of any other Internal
25 Revenue Service office and report directly to Congress through the

26
27 ⁶ Section 7803 is within subtitle F of the Internal Revenue
28 Code, and therefore has been expressly adopted as the law in force
on Guam.

1 National Taxpayer Advocate." Id. § 7803(c)(4)(A)(iii). Last, the
2 local offices of the taxpayer advocate "may, at the taxpayer
3 advocate's discretion, not disclose to the Internal Revenue Service
4 contact with, or information provided by, [the] taxpayer." Id.
5 § 7803(c)(4)(A)(iv).

6 The foregoing provisions of the 1998 Act, all of which have
7 been expressly adopted as the law in force on Guam, reveal
8 Congress's intent to create an independent body within the Internal
9 Revenue Service to provide taxpayers with meaningful assistance and
10 protection. Indeed, in enacting the 1998 Act, "Congress believed
11 that the Taxpayer Advocate serves an important role within the IRS
12 in terms of preserving taxpayer rights and solving problems that
13 taxpayers encounter in their dealings with the IRS." See Joint
14 Comm. Print 1998, 105th Cong., 2d Sess., General Explanation of Tax
15 Legislation Enacted in 1998. Based on the foregoing
16 considerations, the Court finds that the Internal Revenue Code
17 provisions pertaining to the taxpayer advocate, including the
18 requirement that a Notice of Deficiency contain contact information
19 for the local office of the taxpayer advocate, are significant.
20 The Government of Guam, by not including such information in the
21 Notices of Deficiency sent to the plaintiffs, failed to comply with
22 an important notice requirement, thereby rendering the notices
23 fatally deficient and thus void.

24 Moreover, the plaintiffs have submitted evidence that there
25 was no discussion among Department employees about the changes
26 brought about by the 1998 Act. Mr. Joseph Rios, Jr. ("Mr. Rios"),
27 the employee responsible for advising the Director of the
28 Department about changes in the tax laws, testified that he does

1 not recall having had discussions with the Director or anyone else
2 within the Department about the 1998 Act or its implementation in
3 Guam. (Rios Depo. at 11:18-21, attached to Zamsky Decl.) Mr. Rios
4 further testified that the Department did nothing to establish a
5 taxpayer advocate position. (Id. at 14:14-17.) Based on Mr.
6 Rios's testimony, it appears that the Department failed to
7 adequately consider the 1998 Act and its application to Guam. The
8 Department cannot avoid provisions of law merely because it failed
9 to act as is required by law.

10 For the foregoing reasons, the Court finds that the August 4,
11 2000 and the December 19, 2001 Notices of Deficiency sent to the
12 plaintiffs are void.⁷ Because the December 19, 2001 Notice of
13 Deficiency is void, the time within which to make an assessment
14 expired on December 31, 2001. The assessment was not made until
15 nearly three months later, on March 26, 2002, and was therefore
16 time-barred. Accordingly, the Court finds, as a matter of law,
17 that the assessment is void, and therefore grants the plaintiffs'
18 motion for summary judgement on this issue.

19 2. The Plaintiffs' Request for Permanent Injunctive
20 Relief

21 The Court now considers whether the plaintiffs have alleged
22 sufficient grounds to warrant injunctive relief. Actions to enjoin
23 the assessment and collection of taxes are narrowly limited by the
24

25 ⁷ In light of this finding, the Court need not address the
26 plaintiffs' additional argument that the December 19, 2001 Notice
27 of Deficiency is void because it was sent only to Mr. Steffy. The
28 Court also need not address the plaintiffs' argument that the April
24, 2002 Notice of Intent to Levy is void because it was sent to
the plaintiffs' old mailing address, was not sent to Mr. Steffy,
and lacked information regarding a collection due process hearing.

1 Anti-Injunction Act, 26 U.S.C. § 7421(a).⁸ Elias v. Connett, 908
2 F.2d 521, 523 (9th Cir. 1990). Pursuant to the Anti-Injunction
3 Act, courts are barred from entertaining any action filed for the
4 purpose of "restraining the assessment or collection of any tax" by
5 the government.⁹ The purpose of the Anti-Injunction Act is to
6 permit the government "to assess and collect taxes alleged to be
7 due without judicial intervention, and to require that the legal
8 right to the disputed sums be determined in a suit for refund. In
9 this manner the [government] is assured of prompt collection of its
10 lawful revenue." Enochs v. Williams Packing & Navigation Co., 370
11 U.S. 1, 7 (1962) (footnote omitted). While no suit is to be
12 maintained restraining the assessment or collection of any tax,
13 several statutory exceptions exist.¹⁰ If a suit does not fall
14 within one of the exceptions, subject matter jurisdiction does not
15 exist and the court must dismiss. Elias, 908 F.2d at 523.

16 Here, the plaintiffs claim that there is a statutory exception
17 supporting the issuance of a preliminary injunction. Section
18 6213(a) of the Internal Revenue Code provides that an injunction
19 may issue if a collection action is taken before the expiration of
20

21 ⁸ 26 U.S.C. § 7421(a) is contained within subtitle F of the
22 Internal Revenue Code, and thus is applicable to Guam.

23 ⁹ The term "government" shall be used in those instances
where caselaw and the statutes refer to the IRS.

24 ¹⁰ **Section 7421. Prohibition of suits to restrain assessment**
25 **or collection.**

26 **(a) Tax.** Except as provided in sections 6015(e), 6212(a) and
27 (c), 6213(a), 6225(b), 6330(e)(1), 6331(I), 6672(c), 6694(c), or
28 7426(a) or and (b)(1), 7429(b) or 7436, no suit for the purpose of
restraining the assessment or collection of any tax shall be
maintained in any court by any person, whether or not such person
is the person against whom such tax was assessed.

1 the ninety-day period following a Notice of Deficiency. 26 U.S.C.
2 § 6213(a). Because the December 19, 2001 Notice of Deficiency is
3 void, the plaintiffs argue, the time frame for commencing a
4 collection action was not triggered, and the Department's March 24,
5 2002 assessment occurred before a proper Notice of Deficiency was
6 sent. The Court agrees with the plaintiffs, and finds that they
7 satisfy the exception contained in § 6213(a). Thus, the plaintiffs
8 are not jurisdictionally barred from seeking an injunction.

9 However, in order to obtain injunctive relief the taxpayer
10 must, in addition to satisfying one of the recognized exceptions,
11 allege sufficient grounds to warrant injunctive relief. Elias, 908
12 F.2d at 523; Jensen v. Internal Revenue Serv., 835 F.2d 196, 198
13 (9th Cir. 1987). This means that, before an injunction may issue,
14 the plaintiff must show that he will suffer irreparable injury and
15 that he otherwise lacks an adequate remedy at law. Elias, 908 F.2d
16 at 526; Jensen, 835 F.2d at 198; Cool Fuel, Inc. v. Connett, 685
17 F.2d 309, 313 (9th Cir. 1982).

18 Here, the plaintiffs vaguely allege in the FAC that "the
19 existence of the levy has and will continue to cause irreparable
20 damage to Plaintiffs for which there is no remedy at law." (FAC ¶
21 24.) However, the plaintiffs do not offer any evidence to support
22 this allegation.¹¹ Indeed, the plaintiffs fail to address the issue
23

24 ¹¹ The plaintiffs similarly failed to present evidence of
25 irreparable harm when their motion for a preliminary injunction
26 came before Judge Unpingco. In fact, Judge Unpingco denied the
27 plaintiffs' motion on that ground. Following Judge Unpingco's
28 order, the plaintiffs, rather than paying the assessment and moving
for summary judgment on their second cause of action (for a
refund), instead chose to move for summary judgment on their
injunctive relief claim, without providing the Court with evidence
of irreparable harm and lack of an adequate legal remedy.

1 of irreparable harm in their motion, and, in their reply, the
2 plaintiffs merely repeat their allegation that they will suffer
3 irreparable harm if a permanent injunction is not issued. (Reply
4 at 6:20-22.) Thus, the plaintiffs have failed to show any evidence
5 of irreparable harm and lack of an adequate legal remedy. Assuming
6 arguendo that the plaintiffs will suffer financial hardship if
7 injunctive relief is denied, the case law is clear that this does
8 not rise to the level of irreparable harm. See Enochs, 370 U.S. at
9 6 (noting injunctive relief is not available simply because the
10 collection of the taxes would cause an irreparable injury such as
11 financial ruination).

12 In sum, the plaintiffs have not shown that they lack an
13 adequate legal remedy. They can pay the assessment and move for
14 summary judgment on their second cause of action (for a refund).
15 See Cool Fuel, Inc., 685 F.2d at 314 ("it has been established law
16 that payment of the tax followed by a suit for refund constitutes
17 an adequate remedy at law"); Elias, 908 F.2d at 526-27 (paying
18 assessment and filing action for a refund constitutes an adequate
19 remedy at law). Because the plaintiffs have not shown that
20 permanent injunctive relief is warranted, the Court denies the
21 plaintiffs' motion for summary judgment as to their claim for a
22 permanent injunction.¹²

23
24 ¹² At the hearing on this motion, the Court allowed the
25 plaintiffs to file no later than May 24, 2004 a supplemental
26 memorandum on the issue of whether the Court could order the
27 defendant to release the Levy. The plaintiffs timely filed a
28 supplemental memorandum on May 24, 2004. After reviewing and
considering the supplemental memorandum and the authorities cited
therein, the Court finds that the plaintiffs have not cited any
Ninth Circuit authority supporting the issuance of an injunction on
the facts of this case. Moreover, the plaintiffs have not
(continued...)

1 3. The Plaintiffs' Request for Attorney's Fees
2 and Costs

3 The plaintiffs request that the Court award them a judgment
4 for attorney's fees and costs incurred in this action.¹³ Title 26
5 U.S.C. § 7430(a)(2), which has been expressly adopted as the law in
6 force on Guam, provides that, in any court proceeding brought
7 against the government in connection with the determination,
8 collection or refund of any tax, "the prevailing party may be
9 awarded a judgment or a settlement for . . . reasonable litigation
10 costs incurred in connection with such court proceeding."¹⁴ 26
11 U.S.C. § 7430(a)(2). Given the Court's disposition of the
12 plaintiffs' claim for a permanent injunction, the Court finds that
13 the issue of fees and costs should be resolved pursuant to a
14 regularly-noticed motion filed at the conclusion of this
15 litigation. The Court, therefore, denies the plaintiffs' motion
16 for summary judgment on this issue.

17 **III. Conclusion**

18 The Court: (1) grants the plaintiffs' motion for summary
19 judgment that the March 26, 2002 assessment is void; (2) denies the
20 plaintiffs' motion for summary judgment as to their claim for a
21 permanent injunction; and (3) denies the plaintiffs' motion for
22 summary judgment as to their request for attorney's fees and costs.

24 ¹² (...continued)
25 submitted any evidence of irreparable harm and lack of an adequate
26 legal remedy to warrant injunctive relief.

26 ¹³ The plaintiffs neither specify the amount of attorney's
27 fees and costs incurred nor provide evidence of the amount.

28 ¹⁴ "Reasonable litigation costs" is defined to include
reasonable attorney's fees. See 26 U.S.C. § 7430(c)(1)(B)(iii).

1 The plaintiffs are ordered to pay the assessment and move for
2 summary judgment on their second cause of action (for a refund)
3 within thirty (30) days of the date of entry of this Order.

4 **IT IS SO ORDERED.**

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6 Dated: _____

DEAN D. PREGERSON*
United States District Judge

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28 * Honorable Dean D. Pregerson, United States District Judge
for the Central District of California, sitting by designation.